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ATTORNEY GENERAL

June 9, 1997

Office of the Secretary
Federal Communications Commission
1919 M Street NW
Washington, D.C. 20554

OVERNIGHT MAIL

Dear Secretary:

RE: CC Docket No. 97-137

Enclosed for filing in the above case please find an original and eleven (11) copies of the "**Comments of Michigan Attorney General Frank J. Kelley**", together with a diskette and a Proof of Service upon all parties.

Very truly yours,

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c: Donald J. Russell, Department of Justice,
Telecommunications Task Force
ITS, Inc.
Dorothy Wideman, Michigan Public
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All Parties of Record

Cases FCC 1072/CovLtr

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List A B C D E

st No. 97-137

Application by Ameritech Michigan
Pursuant to Section 271 of the
Telecommunications Act of 1996
to provide In-Region, InterLATA
Services in Michigan

CC Docket No. 97-137

STATE OF MICHIGAN)
) ss:
COUNTY OF INGHAM)

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Application by Ameritech Michigan
Pursuant to Section 271 of the
Telecommunications Act of 1996
to Provide In-Region, InterLATA
Services in Michigan

CC Docket No. 97-137

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JUN 12 1997
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COMMENTS OF
MICHIGAN ATTORNEY GENERAL FRANK J. KELLEY

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June 10, 1997

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State of Michigan
Ameritech Michigan
Michigan

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Application by Ameritech Michigan
Pursuant to Section 271 of the
Telecommunications Act of 1996
to Provide In-Region, InterLATA
Services in Michigan

CC Docket No. 97-137

COMMENTS OF
MICHIGAN ATTORNEY GENERAL FRANK J. KELLEY

Frank J. Kelley, as the duly elected Attorney General of the State of Michigan, I submit the following comments pursuant to the public notice issued regarding the application of Ameritech Michigan for authority under § 271 of the Telecommunications Act of 1996 to provide in-region, interLATA service in the State of Michigan.

INTRODUCTION

Ameritech Michigan's (Ameritech) application for in-region, long distance authority represents a significant step in the process of implementing the pro-competitive and pro-consumer policy established by the Federal Telecommunications Act of 1996 (FTA). While the Southwestern Bell application (CC Docket No. 97-121) provides the Federal Communications Commission (FCC) with the first opportunity to announce the standards it will apply in the implementation of § 271 of the FTA, nevertheless, I believe that the resolution of Ameritech's application will have a tremendous impact on the continuing efforts to

open all telecommunications markets to competition not only in the State of Michigan, but throughout the country.

These comments are based upon my participation in the key regulatory and judicial proceedings in Michigan relating to telecommunications competition. As a long time advocate of full, fair and meaningful competition in all sectors of our economy, I have consistently urged the dismantling of all barriers to entry in the telecommunications market. Specifically, I have consistently advocated that ample opportunity be available for consumers to have access to the telecommunications service provider of their choice.

The Michigan Attorney General has statutory responsibilities with respect to the protection of the public interest of the people of the State of Michigan. MCL 14.28; MSA 3.181 and MCL 14.101; MSA 3.211. As the primary enforcer of state antitrust laws, I have consistently represented the competitive interests of the State and its citizens.

Ameritech's and other Bell Operating Companies' (BOCs) entry into their in-region long distance markets should further the consumers' interests by increasing competition in those markets, so long as the BOCs are prevented from obtaining unfair advantages from their dominant positions in their basic local exchange markets. Nonetheless, the issue to be addressed in this proceeding is not whether Ameritech should be authorized to enter the long distance market in Michigan, but when that authority should be granted. While aware of the benefits of increased long distance or interexchange competition, Congress did not authorize immediate entry into those markets in the FTA. Rather, the FTA holds out long distance

authority as an incentive to induce the BOCs, such as Ameritech, to fully cooperate in the task of opening the local exchange markets to competition.

The fundamental policy question that the FCC must resolve in this proceeding is whether Ameritech has proved that it has discharged all of its market-opening obligations in Michigan such that the FTA's goal of introducing effective competition into local exchange markets has been fully accomplished in the State of Michigan.

The FCC must also consider the extent to which it can rely upon the consultation provided by the Michigan Public Service Commission (MPSC) in this proceeding. If the MPSC has fallen short in its review of Ameritech's compliance with the competitive checklist set forth in § 271(c)(2)(B) of the FTA, it is incumbent upon the FCC to say so. Otherwise, the FCC runs the risk of undermining the efforts of public utility commissions (PUCs) in other States that, often with the participation of the State's Attorney General's Office, have undertaken thorough reviews of their local BOC's compliance with the requirements of § 271 of the FTA.

Based on my participation in the MPSC's proceedings to examine the status of Ameritech's compliance with § 271 of the FTA (MPSC Case No. U-11104), it is my judgment that the local exchange market in Michigan is not sufficiently opened to competition, consequently, Ameritech's entry into the long distance market in the State at this time is not consistent with the public interest, convenience and necessity.

**SECTION 271 REQUIRES A THOROUGH EXAMINATION OF THE
EXTENT TO WHICH THE LOCAL EXCHANGE MARKET IN
MICHIGAN IS OPEN TO COMPETITION AS A PRECONDITION FOR
AMERITECH'S ENTRY INTO THE LONG DISTANCE MARKET IN
MICHIGAN.**

Section 271 of the FTA provides the mechanism by which BOCs such as Ameritech may apply for authority to provide interLATA service originating in the States in their regions.

Section 271 provides criteria which the FCC must use to evaluate the competitive status of local exchange service when a BOC seeks in-region interLATA authority. First, § 271(c)(1)(A) (Track A) requires the presence of a "facilities-based competitor" providing local exchange services to residential and business subscribers pursuant to a lawful interconnection agreement. Second, § 271(c)(2)(B) sets out a "competitive checklist" that itemizes operational facilities to be established by BOCs to enable interconnection with competitors. Third, the FCC must expressly determine whether an application is "consistent with the public interest, convenience, and necessity" under § 271(d)(3)(C).

The requirements of § 271, considered collectively in view of the FTA's pro-competitive policy objectives, require that the FCC undertake a thorough and complete examination of the status of the local exchange market in Michigan. Without a comprehensive assessment of this market, the FCC will not be able to assure implementation of competition as a disciplinary mechanism to replace regulation of monopoly local exchange services. In addition to determining compliance with specific checklist requirements, the FCC must use the public

interest standard to address and fully resolve competitive concerns related to opening local exchange markets.

Ameritech has alleged in its application that it has complied with "Track A" of § 271 by entering into MPSC-approved interconnection agreements with Brooks Fiber, MFS and TCG. Ameritech also alleges that it has fully implemented the competitive checklist set forth in § 271(c)(2)(B).

The purpose of the Track A requirements is to ensure that, at a minimum, competitive forces are actually beginning to have an impact in the local exchange markets and are starting to exert competitive discipline over Ameritech. In order to satisfy the Track A requirements, it is not necessary for Ameritech to show that its competitors have captured any particular percentage of the local exchange market. However, in order to establish compliance with the Track A requirements, Ameritech is required to prove the existence of a track record of actual local exchange competition sufficient to provide reasonable assurance that there are no artificial impediments to the development of a truly competitive local exchange market in Michigan. At this time, I believe that no such record of actual local exchange competition exists in Michigan. Indeed, the facts indicate that the status of local competition in Michigan is extremely fragile.

Currently, there are interconnection agreements between Ameritech Michigan and other providers, such as Brooks Fiber Communications, in place. However, the experiences of the interconnecting companies fail to reveal working interconnection arrangements which permit competition in the local market. While Brooks Fiber Communications has almost 2 years of actual in-service experience, Brooks Fiber continues to encounter numerous problems with the

implementation of its interconnection agreement with Ameritech Michigan. Some of Brooks Fiber's problems with the implementation of its interconnection agreement with Ameritech Michigan include the inability of loops to be connected at customer premises, the inability of Brooks Fiber's customers to "PIC" Ameritech intraLATA toll, unreliable electronic interfaces with Ameritech Michigan and the inability of Brook Fiber's customers to obtain service information.

Interestingly enough, even though Brooks Fiber serves only 1.1% of the Grand Rapids local market, Ameritech Michigan points to Brooks Fiber as evidence of the existence of effective local competition. While there is no metrics test that requires a showing of a specific level of market concentration on the part of Competitive Local Exchange Carriers (CLECs), Brooks Fiber's operations are so limited that no reliable inference may be drawn about the feasibility of full scale competitive entry into Michigan's local exchange market.

Moreover, AT&T Communications of Michigan was recently compelled to file a complaint with the MPSC in order to address the fact that the quality of Ameritech Michigan's access service has deteriorated to an unreasonable and unsatisfactory level (MPSC Case No. U-11240). MCI Telecommunications Corporation joined AT&T in that case. Unfortunately, the number of telephone customer complaints filed with my office and with the MPSC supports the notion of a pattern of decline in the quality of Ameritech Michigan's service to both its end-use customers and other service providers.

One of the items on the competitive checklist requires nondiscriminatory access to 911 services (Section 271(c)(2)(B)(ii)). While Ameritech Michigan claims to

have fully implemented this item of the checklist, the experiences of TCG Detroit in the City of Southfield, Michigan clearly indicate otherwise (MPSC Case No. U-11229, filed October 24, 1996). The fact of the matter is that enhanced 911 data base is not fully accessible to CLECs such as TCG and the situation continues to be fraught with significant public health and safety concerns.

Michigan's experience with Ameritech Michigan on the issue of intraLATA toll dialing parity speaks quite eloquently about how far Ameritech Michigan is away from opening up the local telecommunications market to its competitors. Ameritech Michigan was ordered by the MPSC in 1994 to provide 100% intraLATA dialing parity no later than January 1, 1996. To date, Ameritech Michigan has failed to comply with the MPSC's orders.

With dialing parity taking place in other Ameritech states, Ameritech toll revenues have been going down in those states as compared to its toll revenues from Michigan. As a percentage of Ameritech's region-wide total toll revenues, Ameritech Michigan's toll revenues are rising dramatically. Indeed, the third quarter 1996 report filed with the Securities and Exchange Commission (SEC) by the Ameritech subsidiaries, Michigan Bell, Ohio Bell, Illinois Bell, Indiana Bell and Wisconsin Bell, clearly indicates that the toll revenues from Michigan Bell as a percentage of Ameritech's total revenues is 52.5%. According to Ameritech Michigan's 10K and 10Q Reports, the Company's return on equity for 1993, 1994 and 1995 was 19.65%, 21.5% and 40.3%, respectively. In addition, Ameritech Michigan's return on equity for the first three quarters of 1996, on an annualized basis was 43.3%. I believe that as long as Ameritech Michigan refuses to convert all of its exchanges to intraLATA toll dialing parity, it will continue to reap huge returns due

to the absence of competition in the intraLATA toll market in Michigan. Clearly, it is inconsistent with the public interest, convenience and necessity to grant Ameritech Michigan's application in the face of the lack of effective local competition.

In its review of Ameritech Michigan's Section 271 application, the FCC must examine generally whether the presence of competitive carriers in the local market (1) demonstrates that, in fact, the barriers to local entry have been effectively lowered and genuine facilities-based competition has emerged, and (2) effectively restrains the incumbent from using its local monopoly to harm competition in the long distance market. I believe that neither of these requirements have been met by Ameritech Michigan. Since there is only *de minimus* facilities-based competition in Michigan, Ameritech Michigan cannot meet the requirements of Section 271. If Ameritech Michigan is prematurely granted entry into the interLATA market, it will ensure that there will be no meaningful competition in Michigan for many more years. Presently the local competition in Michigan is so lacking that Ameritech Michigan has been able to decrease its investment in the Michigan telecommunications infrastructure by an average \$50 million per year since 1991, and yet been able to post the above-referenced annualized return on equity in 1996 of 43.3%

In its application to provide in-region interLATA services in Michigan, Ameritech Michigan emphasizes the fact that it has entered into one or more interconnection agreements with other carriers. I believe that the mere fact of entering into an interconnection agreement does not satisfy the requirements of Section 271 (c)(1)(A) ("Track A"). Track A requirements are met only when at least

one carrier has reached a binding interconnection agreement with Ameritech Michigan under which access and interconnection services are provided in a fully functional manner and the interconnecting carrier is providing local exchange service to residential and business customers in Michigan either exclusively over its own independent facilities or predominantly over its own independent facilities. In addition to the letter and spirit of the Act, the public interest, convenience and necessity require that Ameritech Michigan first conclusively demonstrate that facilities-based competitors are in fact fully operational in the local market and that it has fulfilled each of its obligations to enable additional entry and expansion of the local market before its application to provide in-region long distance service in Michigan is granted.

It is my belief that once Ameritech Michigan is allowed to participate in the long distance market, it will have no further incentive to open up the local market to competition. Ameritech Michigan's resolve to vigorously resist all efforts at opening the local market is clearly demonstrated by its continued refusal to fully implement intraLATA toll dialing parity almost 3 years after the MPSC issued its first order requiring dialing parity. While carriers such as AT&T and MCI have the necessary financial resources to litigate with Ameritech Michigan, most other competitors do not.

Ameritech Michigan has neither fully implemented the requirements of the 14-point checklist nor has it demonstrated that granting it approval to enter into the interLATA service market is consistent with the public interest, convenience and necessity. In addition, in light of the absence of any meaningful competition at the local level of Michigan's telecommunications market, I believe that Ameritech

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Michigan's application to provide in-region interLATA services in Michigan is premature. Accordingly, Ameritech Michigan's application should be denied.

Very truly yours,

A handwritten signature in black ink, appearing to read "Frank J. Kelley", written over the printed name.

FRANK J. KELLEY
Attorney General
State of Michigan